IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 364 of 2006
In
SPECIAL CIVIL APPLICATION No. 16500 of 2005

For Approval and Signature:

HONOURABLE MR. JUSTICE M. S. SHAH
AND
HONOURABLE MR. JUSTICE SHARAD D. DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNION OF INDIA - Appellant(s)
Versus
NILKANTH TULSIDAS BHATIA & 7 - Respondent(s)

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Appearance :
MR ND NANAVATI, Sr. Advocate with MS MEGHA JANI for Appellant(s) : 1,
MR NAGESHWARA RAO, Sr. Advocate with Mr YF MEHTA for Respondent(s) :1
None for Respondent(s) : 3, 5-7.
MR JITENDRA MALKAN for Respondent(s) : 4,
MR KAMAL B TRIVEDI, ADVOCATE GENERAL with Mr SUNIT C. SHAH, for Respondent(s) : 8,
MR PRANIK K NANAVATI for Respondent(s) : 7

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 20 /03/2006
CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE M. S. SHAH)

This appeal is directed against the order dated 7.3.2006 of the learned Single Judge directing the Railway Administration and all others not to give any further publicity to the report of the High Level Committee headed by Mr Justice UC Banerjee and not to implement and not to take any further action on the basis of the said report meaning thereby the learned Single Judge has directed that the said report shall not be further acted upon and relied upon in any manner whatsoever by anybody including the respondents. The learned Single Judge has also fixed the final hearing of the petition in the week commencing from 3.4.2006.

We heard the learned counsel at length. With their consent the appeal was taken up for final disposal and is accordingly being disposed of by this judgment.

F A C T S

2. On 27.2.2002, an unfortunate incident took place when 58 passengers lost their lives on account of the fire caused in the S-6 coach of Sabarmati Express near the Godhra Railway Station and more than 40 passengers sustained injuries. Criminal complaints came to be filed being CR Nos. 9 and 10 of 2002 at Godhra Railway Police Station on 27.2.2002 itself, for the offences punishable under

Sections 302, 307, 147, 148, 149, 436, 153-A read with Section 120B of the Indian Penal Code and Sections 141, 150 and 153 of the Indian Railways Act, 1989. Later on, the provisions of the Prevention of Terrorists Act, 2002 were also invoked and after filing of the charge-sheets, the case is transferred to the Special Court under POTA where the trial for the aforesaid criminal offences is still pending.

3.0 Appointment of Commission of Inquiry

3.1 On 28.2.2002 i.e. on the very next day after the incident, the Chief Minister of the State of Gujarat made a statement on the floor of the Legislative Assembly that a Commission of Inquiry under Section 3 of the Commissions of Inquiry Act, 1952 (hereinafter referred to as "the CoI Act") will be appointed to inquire into the aforesaid incident. By notification dated 6.3.2002, the Government of Gujarat appointed one man Commission of Inquiry under the said Act consisting of Mr Justice KG Shah, a retired Judge of this Court. Subsequently by notification dated 21.5.2002, the Commission was reconstituted and the terms of reference were also expanded :-

(i) Mr Justice GT Nanavati, a retired Judge of the Hon'ble Supreme Court was appointed as the Chairman and Mr Justice KG Shah was appointed as a Member.

(ii) The Commission was required to inquire into and report on the incident of setting on fire some coaches of Sabarmati Express train near Godhra Railway Station

on 27.2.2002 and subsequent incidents of violence in the State of Gujarat in the aftermath, and adequacy of administrative measures taken to prevent and deal with the disturbances in Godhra and subsequent disturbances in the State.

3.2 The terms of reference of the reconstituted Commission (hereinafter referred to as "the Commission" or "Justice Nanavati Commission") were amended on 20.7.2004 also. The terms as amended till 20.7.2004 were as under :-

(1) To inquire into -

(a) the facts, circumstances and the course of events of the incidents that led to setting on fire some coaches of the Sabarmati Express train on 27.2.2002 near Godhra Railway Station.

(b) the facts, circumstances and course of events of the subsequent incidents of violence in the State in the aftermath of the Godhra incident; and

(c) the adequacy of administrative measures taken to prevent and deal with the disturbances in Godhra and subsequent disturbances in the State;

(d) Role and conduct of the then Chief Minister and/or any other Minister(s) in his Council of Ministers, Police Officers, other individuals and organization in both the events referred to in clause (a) and (b);

(e) Role and conduct of the then Chief Minister and/or any other Minister(s) in his Council of Ministers, Police Officers.

(i) in dealing with any political or non political organization which may be found to have been involved in any of the events referred to hereinabove,

(ii) in the matter of providing protection, relief and rehabilitation to the victims of communal riots,

(iii) in the matter of recommendations and directions given by National Human Rights Commission from time to time.

(2) To ascertain as to whether the incident at Godhra was pre-planned and whether information was available with the agencies which could have been used to prevent the incident;

(3) To recommend suitable measures to prevent recurrence of such incidents in future;

[emphasis supplied]

3.3 The time limit for submitting the report by the Commission has been extended from time to time and the Commission is continuing with the proceedings – after examining hundreds of witnesses and receiving thousands of documents and affidavits.

4.0 Appointment of High Level Committee by Railway Administration and its Interim Report

4.1 During pendency of the above proceedings before Justice Nanavati Commission, by notification dated 4.9.2004, the Government of India in the Ministry of Railways (Railway Board)

constituted a High Level Committee headed by Mr Justice UC Banerjee, a retired Judge of the Hon'ble Supreme Court of India (hereinafter referred to as "the Committee") with the following terms of reference :-

(a) to ascertain the precise cause of fire in coach S-6 of Sabarmati Express on 27.2.2002 and to recommend suitable measures to prevent such incidents;

(b) to ascertain the events, developments and circumstances that took place after the train left Muzaffarpur on 25th February, 2002 and before it reached Godhra and beyond (including the States of Bihar, Uttar Pradesh and Madhya Pradesh) and if those causes individually or conjointly, contributed to the fire;

(c) to ascertain why the said train, including S-6 coach was overcrowded with passengers, many of whom were without reservation, and if their behaviour in any manner contributed to the fire;

(d) to ascertain if there was any wrongful act, neglect or default on the part of the officials and workmen of the railway administration and its security staff but for which such large-scale loss to life and property could have been averted;

(e) to ascertain any other probable internal and external factors and/or aggravating circumstances that may have led to the tragedy;

(f) to ascertain acts of commission and/or omission responsible for the cause of fire and to fix responsibility for the cause of fire and to fix responsibility for the same, individually or collectively;

(g) to examine the adequacy of the fire retardant features of railway coaches and fire fighting measures with a view to

inducting a superior technology and to suggest safeguards for prevention of fire on trains and at railway stations;

(h) To examine the preparedness and actual response with respect to rescue and relief operations in S-6 coach and recommend measures for improving the quality of response in such situations;

[emphasis supplied]

4.2 Vide notification dated 2.12.2005, the Government of India in exercise of the powers conferred by Section 11 of the CoI Act directed that all the provisions of sub-sections (2) to (5) of Section 5 of the CoI Act shall apply to the Committee.

4.3 The Committee submitted **interim report** dated 17.1.2005. It appears from the said report that the Committee took a prima facie view that the incident in question which took place on 27.2.2002 was an accident. The Committee referred to the accident bulletin issued by the Railway Administration on 28.2.2002, particularly item Nos. 9 to 13 which recorded the following :-

"9. Brief particulars : 9166 Up MFP – ADI Sabarmati Expresse arrived at Godhra. There was some altercation between the train passenger and tea stall staff resulting in stone throwing. To avoid further trouble the train was started but stopped near the advance started due to stone throwing. The mob set fire to 3 coaches resulting in grievous injury to passengers.

10. Casualties : Killed – 7 Grievous Injury – 23, Simple – 41.

11. Relief arrangement – ARME – BRC -
Ord : 8.45,
Dep : 9.05
B/ Dn BRC – Ord 9.10
Fire Brigade – WKB – Ord : 8.35

12. Officers visiting the site – ADRM with branch officers.

13. Prima Facie Cause : Judicial Inquiry Ordered."

The Committee observed in the report, inter alia, as under :-

"The writer of the bulletin has already come to the conclusion that the mob did set fire to the three coaches – significantly this concept of mob setting fire has been in all railway correspondence as noticed above – the undersigned has not been able to follow as to how such a conclusion could be arrived at by all and sundry in the hierarchy of officers of the railways (page 107). ..... The key issue, therefore stands out to be – can the fire thus be said to be a miscreant activity by an outsider on an overcrowded moving train. The answer, in my considered view and on the basis of the available documentary support and oral statement, cannot but be in the negative (page 123 of the paperbook).

[emphasis supplied]

"It is, however, made clear that after the completion of winess-action before the High Level Committee, the undersigned may **add a page or two** as regards the causes of fire as well along with other issues referred to the High Level Committee as noted above." [Page 99)

[emphasis supplied]

Then the interim report contained, inter alia, the following conclusion :-

> "The corroborative statements of the witnesses before the High Level Committee stand out to be in one direction, viz., dominant presence of the Kar Sevaks in the coach. If there was such a miscreant activity, would the Kar Sevaks allow to get themselves burnt without a murmur : the answer cannot but be in the negative and it is in this context, the undersigned feels it expedient to conclude that the question of there being any miscreant activity does not and cannot arise and the report of the DRM containing such an assertion cannot but be true. ... . Incidentally, as per the report of the Technical Expert (Electrical), there has been no electrical fault culminating in the fire. On the basis of the above enunciation and upon elimination of the "Petrol theory" or even any "miscreant activity story" both being totally absurd the fire on Sabarmati Express on 27th February 2002 can not but be ascribed to be an accidental fire ... ... and not a deliberate attempted event."
>
> [emphasis supplied]

5. After the above report dated 17.1.2005 was given wide publicity, Special Civil Application No. 1103 of 2005 came to be filed in January 2005 for challenging the constitution of the above High Level Committee. During the course of hearing on 31.3.2005, the said petition was permitted to be withdrawn with liberty to file a fresh petition. Accordingly on 16.4.2005, the petition giving rise to the present appeal came to be filed by Nilkanth Tulsidas Bhatia, a passenger travelling in the Sabarmati Express on the fateful day and that too in S-6 coach itself, challenging the appointment of the

Committee on the basis of various contentions including the following :-

(i) in view of the appointment of the Commission of Inquiry by the State Government, the Central Government had no power to appoint any new Commission or Committee in view of the express bar contained in Section 3 of the CoI Act, and much less after a lapse of more than two years and six months from the date of the incident.

(ii) in view of Section 119 of the Railways Act barring the appointment of any Inquiry Committee after the appointment of a Commission under the CoI Act, the Central Government had no power to appoint any Committee in exercise of the powers under Sections 114 and 115 or any other provisions of the Railways Act.

(iii) Justice Nanavati Commission had collected voluminous evidence and is still functioning. Appointment of the Committee after more than two years and six months from the date of the incident was not only unwarranted, but also mala fide.

(iv) The appointment of the Committee was made

to prejudice the pending trial of the criminal case.

The petitioner also challenged the Central Government notification dated 2.12.2005 conferring upon the Committee the powers under Sub-sections (2) to (5) of Section 5 of the CoI Act.

On behalf of the Railway Administration, counter affidavits dated 18.11.2005 and 22.12.2005 were filed. Rejoinder was also filed on behalf of the petitioner.

Orders passed by learned Single Judge

6. When the petition reached preliminary hearing, the following bi-parte order was passed by the learned Single Judge on 26.10.2005 :-

> "Heard learned counsel for the parties.
>
> It is observed that if respondent No.6 – Commission delivers any report, the same will not be implemented by respondent Nos. 1 to 3 herein, without the permission of this Court, till the next date of hearing. S.O. to 25.11.2005."

The aforesaid order was continued from time to time.

When the Committee issued summons for examining some of the witnesses, the original petitioner prayed for stay of the proceedings before the Committee on the ground that if the witnesses, who are already examined by Justice Nanavati Commission, and also the persons, who are witnesses in the criminal

trial before the POTA Court, are examined by the Committee, the same will affect the prosecution and the trial pending before the POTA Court. After hearing the learned counsel for the parties, the learned Single passed the following order on 19.12.2005 on the stay application :-

> "... ... for the time being it will be appropriate to pass an order that if a proper application is made before respondent No. 6 (i.e. the Committee) for granting adjournment by those witnesses who are summoned, the same may be considered and dealt with objectively by respondent No.6 and respondent No.6 may adjourn the hearing and examination of the said witnesses. With this hope, at present no order is passed with regard to any interim relief at this stage pending reply to be filed by the concerned respondents to the amended petition and the same will be considered on the next date of hearing."

After the aforesaid order was passed, some of the witnesses who were examined by the Committee submitted adjournment applications and in view of the aforesaid observations, the Committee adjourned the proceedings. Those witnesses who did not submit any such adjournment application were examined. When the stay application again reached hearing on 10.2.2006, the learned Single Judge again passed a similar order suggesting that if appropriate applications for adjournment were submitted before the Committee, such applications would be considered.

The petition was thereafter taken up for admission hearing as well as hearing of interim relief on 21.2.2006. The

learned Single Judge heard the learned counsel for the petitioner as well as the learned counsel for the Railway Administration at length on 21.2.2006 and posted the matter for pronouncement of the orders on 7.3.2006. In the meantime, the Committee submitted its final report to the Railway Administration on 3.3.2006. In the order dated 7.3.2006, the learned Single Judge referred to the said intervening development also and was constrained to note that an impression was given to the Court that between the date of hearing on 21.2.2006 and the date of pronouncement of the order on 7.3.2006, nothing was going to happen and that no steps were taken by the Committee for summoning the witnesses during the said dates and, therefore, the learned Single Judge did not pronounce even any operative order at the last hearing which took place on 21.2.2006, but the Court was of the firm opinion that interim stay of further proceedings before the Committee was required to be granted.

7. On merits of the controversy, the learned Single Judge gave the finding that prima facie the terms of the reference of the Committee especially to inquire into the cause of fire were directly in conflict with what is being inquired into by the Commission of Inquiry appointed by the State Government headed by Mr Justice GT Nanavati. As regards the other terms of reference regarding safety measures, etc., when the Railway Administration constituted the Committee after a period of two years and six months from the date of appointment of Commission by the State Government, they could have waited till Justice Nanavati Commission appointed by the

State Government submits its report.

Secondly, the learned Single Judge also expressed the view that the petitioner's apprehension was prima facie justified that examination of witnesses who are already examined by the State Commission and examination of the persons who are witnesses before POTA Court in the criminal trial will adversely affect the criminal trial and the witnesses are likely to be prejudiced. The learned Single Judge also accepted that the petitioner was justified in contending that any finding to be given might prejudice the proceedings before the Commission as well as the Court conducting the criminal trial and that the petitioner himself being an injured witness in the incident that took place on 27.2.2002, was personally and vitally interested and affected by the report of the Committee. The learned Single Judge, thus gave the findings of prima facie case, the balance of convenience and irreparable loss in favour of the petitioner and against the Railway Administration.

The learned Single Judge has accordingly granted interim relief directing that the report submitted by the Committee headed by Mr Justice UC Banerjee shall not be acted upon and relied upon by any of the respondents and anybody in any manner whatsoever and the Railway Administration and all others are directed not to give any further publicity to the said report and not to implement and/or to take any further action on the basis of the report, meaning thereby the said report shall not be further acted

upon and relied upon in any manner whatsoever by anybody including the respondents. The learned Single Judge also fixed the final hearing of the petition in the week commencing from 3.4.2006.

It is the aforesaid order which is challenged in this appeal.

CONTENTIONS ON BEHALF OF APPELLANT – RAILWAY ADMINISTRATION.

8. Mr ND Nanavati, learned counsel for the appellant-Railway Administration raised the following contentions :-

8.1 The original petitioner (respondent No.1 in the appeal) had no locus standi to file such a petition challenging the appointment of the High Level Committee. The petition was not a public interest petition nor was the petitioner himself a witness summoned by the Committee. Reliance was placed on the decisions of the Apex Court in Calcutta Gas Co. (Prop.) Ltd. vs. State of WB, AIR 1962 SC 1044 (para 5) and in Mani Subrat Jain vs. State of Haryana, (1977) 1 SCC 486 (para 9).

8.2 The terms of reference of the Committee were not in conflict with the terms of reference of the State Commission. The terms of reference of the Station Commission presuppose that the coach was set on fire. The Committee was appointed to find out the precise cause of fire because it was after all the railway property

which had suffered damage and the railway passengers had died or sustained injuries and, therefore, the Railway Administration was concerned with the safety of the passengers as well as the protection of its properties so that suitable measures for preventing recurrence of such incident can be taken. Strong reliance was placed on the decision of the Apex Court in State of Karnataka vs. Union of India, (1977) 4 SCC 608 (paras 22-24) in support of the contention that there may be some events and common areas of inquiry, but the inquiry may be made by different authorities for different purposes and from different angles and perspectives.

8.3 Under Section 2 of the CoI Act only the Central Government has the power to appoint a Commission in relation to any entry in any of the three lists in the Seventh Schedule. The State Government has the power to appoint a Commission of Inquiry only in relation to the subjects falling in Lists II and III of the Seventh Schedule. "Railways" is Entry 22 in List I (i.e. the Union List) and, therefore, the Central Government alone has the jurisdiction to appoint such Commission.

Reliance was also placed on the decision of the Apex Court in Ram Jawaya vs. State of Punjab, AIR 1955 SC 549 in support of the contention that the exercise of power under Article 73 was enough to clothe the Central Government with the authority to appoint the Commission.

8.4 No prejudice was likely to be caused by the submission of the report of the High Level Committee or publicity being given to the same. The Railway Administration does not intend to implement the report till final hearing of the petition, but there will be no harm or prejudice caused to anyone, much less to the petitioner, if the report of the High Level Committee is tabled before the Parliament and discussed. The Government cannot be prevented from laying the report on the table of the Parliament. The direction of the learned Single Judge is in conflict with the provisions of Section 3(4) of the CoI Act.

The Court is only concerned with the legal position about the binding effect or otherwise of the findings given by the Committee on the criminal proceedings and the effect of the statements of the witnesses before the Commission or the Committee. The Court is not concerned with the apprehension of a shaky witness if the Committee looks into a matter which may also be the subject matter of a criminal trial. That does not mean that prejudice is going to be caused to witnesses in the criminal trial.

Strong reliance was placed on the decision of the Apex Court in Kehar Singh vs. State (Delhi Administration), (1988) 3 SCC 609 (pg. 714 paras 218-222, pg. 719 para 236, pg 722 para 245) in support of the proposition that the statements made before a Commission of Inquiry cannot be used as evidence in a criminal trial.

8.5 The learned Single Judge erred in observing that the Committee submitted the report in order to overreach the process of the Court. There was no interim stay or injunction restraining the Committee from submitting its report or giving publicity to the same. Since the term of the Committee was going to expire on 4.3.2006, the Committee was justified in submitting the report on 3.3.2006. Hence, the observations made by the learned Single Judge against the Committee in para 15 of the order are not justified. The subsequent development of submission of the report on 3.3.2006 could not have been taken into account while passing the interim order. No hearing was afforded to the authorities with reference to the said subsequent development nor is the report challenged. In fact, on submission of the report by the Committee on 3.3.2006, the main petition itself has become infructuous and nothing further is required to be done in the said petition.

SUBMISSIONS ON BEHALF OF FIRST RESPONDENT – ORIGINAL PETITIONER

9. On the other hand, Mr Nageshwar Rao, learned Senior Advocate with Mr YF Mehta for the first respondent - original petitioner made the following submissions :-

9.1 Both the Commission appointed by the State Government on 6.3.2002 and the Committee appointed by Railway Administration on 4.9.2004 are in relation to the same incident of Godhra train carnage which took place on 27.2.2002, for which FIRs were filed on the same date. 58 people lost their lives and more than

40 persons sustained injuries. In view of the provisions of the CoI Act, particularly the proviso to Section 3(1) of the said Act and Section 119 of the Railways Act, the Central Government or the Railway Administration had no authority or jurisdiction to appoint any Commission, much less a Committee, to inquire into the same incident. What cannot be directly done by virtue of the prohibitions contained in the CoI Act or in Section 119 of the Railways Act cannot be permitted to be done indirectly by appointment of a Committee.

9.2 Merely because the offence involved damage to the property of the railway administration or merely because the victims happened to be railway passengers, these aspects do not detract from the fact that the matter pertained to maintenance of law and order and public order and that the offences committed have been investigated by the State police and are being tried by the State Courts under the Criminal Law of the land. Hence, the State Government did have the jurisdiction to appoint the Commission.

9.3 Even where an inquiry by the Commissioner of Railway Safety is permissible, clause (b) of Rule 2(6) provides that if there is a criminal or civil case pending, the Commissioner's report is to be treated as a strictly confidential document.

9.4 The Court's attention is invited to the findings given in the interim report dated 17.1.2005 (page 96) including the reference to the accident bulletin (pages 107-109) and to the judgment of the

Railways Claims Tribunal (pages 129, 134 & 137) to show that it has been the consistent stand of the Railway Administration right from the date of the incident that a mob had attacked and set the S-6 coach of the Sabarmati Express on fire. The criminal proceedings are still pending before the Special Court, POTA for the offences punishable under the POTA as well as under the Indian Penal Code and also under the Railways Act. Even in those proceedings, nobody had ever come out with "the accident theory" and the defence of the accused in those criminal proceedings is challenging or doubting the prosecution evidence indicating their presence at the scene of offence at the time of the incident, but nobody had even suggested that there was no mob attack on the train and that fire erupted accidentally. In the teeth of the aforesaid consistent stand of the Railway Administration all throughout for more than two years and six months from the date of the incident, all of a sudden the Railway Administration cannot be permitted to get away with the appointment of a Committee constituted only for the mala fide purpose of inventing "the accident theory".

9.5 The original petitioner does have the locus standi. He was one of the passengers travelling in the same train and was a victim of the mob attack. The petitioner does, therefore, have the right to insist that there should be fair trial and that it is not only the accused who have right to claim fair trial, but every victim and every witness of an offence also has the right to insist that there

must be fair trial. Reliance is placed on the decision of the Apex Court in Venkareswara Rao vs. Government of Andhra Pradesh, AIR 1966 SC 828 (para 5) in support of the contention that the petitioner need not have a personal or proprietary interest in the subject matter of the petition.

DISCUSSION

10. Since the first and foremost challenge to the constitution of the High Level Committee is that once the State Government appointed a Commission under Section 3 of the CoI Act on 6.3.2002 to inquire into and report on "the incident of setting on fire some coaches of Sabarmati Express near Godhra Railway Station on 27.2.2002 and subsequent incidents of violence ... ..." and the Commission is still functioning and the Central Government or the Railway Administration cannot appoint any such Commission in view of the bar contained in the proviso to Section 3(1) of the CoI Act or any other Committee of Investigation by virtue of the prohibition contained in Section 119 of the Railways Act, it is necessary to consider the relevant statutory provisions in this behalf.

Section 3(1) of the CoI Act reads as under:-

> "3. Appointment of Commission.- (1) The appropriate Government may, if it is of opinion that it is necessary so to do, and shall, if a resolution in this behalf is passed by each House of Parliament or, as the case may be, the Legislature of the State, by notification in the Official Gazette, appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance and performing such functions and within such time as may be specified in the

notification, and the Commission so appointed shall make the inquiry and preform the functions accordingly;

Provided that where any such Commission has been appointed to inquire into any matter-

(a) by the Central Government, no State Government shall, except with the approval of the Central Government, appoint another Commission to inquire into the same matter for so long as the Commission appointed by the Central Government is functioning;

(b) by a State Government, the Central Government shall not appoint another Commission to inquire into the same matter for so long as the Commission appointed by the State Government is functioning, unless the Central Government is of opinion that the scope of the inquiry should be extended to two or more States.

[emphasis supplied]

Section 2 of the CoI Act defines "appropriate Government" as the Central Government, in relation to a Commission appointed by it to make an inquiry into any matter relatable to any of the entries enumerated in List I or List II or List III in the Seventh Schedule to the Constitution and the State Government, in relation to a Commission appointed by it to make an inquiry into any matter relatable to any of the entries enumerated in List II or List III in the Seventh Schedule to the Constitution.

Section 4 confers powers of a civil Court for summoning and enforcing the attendance of any person from any part of India and examining him on oath, requiring the discovery and production

of any document, receiving evidence on affidavits, requisitioning any public record or copy thereof from any Court or office and issuing commissions for the examination of witnesses or documents.

Section 5 provides that the Government appointing the Commission may confer additional powers on the Commission as per the provisions of sub-sections (2) to (5) of Section 5 of the Act. These powers are basically to empower the Commission to compel furnishing information and also the power to get inquiries made, the power to enter any building or place where the Commission has reason to believe that any books of account or other documents relating to the subject matter of the inquiry may be found and also the power of seizure of such documents.

Section 11 provides that where any authority (by whatever name called), other than a Commission appointed under Section 3, has been set up for the purpose of making an inquiry into any definite matter of public importance, the Government has the power to apply the provisions of the CoI Act to that authority, subject to the prohibition contained in the proviso to sub-section (1) of Section 3.

Section 119 of the Railways Act reads as under :-

> "119. No inquiry, investigation, etc., to be made if the Commission or Inquiry is appointed. - Notwithstanding anything contained in the foregoing provisions of this Chapter, where a Commission of Inquiry is appointed under the Commissions of Inquiry Act, 1952 (3 of 1952), to inquire into an accident, any inquiry, investigation or other proceeding pending in relation to that accident shall not be proceeded with, and all records of other documents relating to such inquiry shall be forwarded to such authority as may be specified by the Central Government in this behalf."

11. The following propositions emerge from an analysis of the relevant statutory provisions :-

I. (i) If the appropriate Government is of the opinion that it is necessary so to do, it **<u>may</u>** appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance. [Sec.3(1)]

(ii) If a resolution in this behalf is passed by each House of Parliament or, as the case may be, the Legislature of the State, the appropriate Government **<u>shall</u>** appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance.

[Sec. 3(1)]

II. The appropriate Government may apply the provisions of the CoI Act to any authority (by whatever named called) set up for the purpose of making any inquiry into any definite matter of public importance. [Sec.11]

III. The proviso to sub-section (1) of Section 3 imposes the following prohibitions on exercise of powers under Sec. 3(1) or under Sec. 11 :-

(a) Where any such Commission has been appointed to inquire into any matter by the Central Government, no State Government shall, except with the approval of the Central Government, appoint another Commission to inquire into the same matter for so long as the Central Commission is functioning.

(b) **Where any such Commission has been appointed to inquire into any matter by the State Government, the Central Commission shall not appoint another Commission to inquire into the same matter for so long as the State Commission is functioning**, unless the Central Government is of the opinion that the scope of the inquiry should be extended to two or

more States.

IV. The above prohibitions (a) and (b) forming part of the proviso to sub-section (1) of Section 3 are applicable, irrespective of the fact whether the Commission is appointed by the appropriate Government on the formation of its opinion or whether such Commission is appointed by the appropriate Government upon a resolution having been passed by the Parliament or the State Legislature, as the case may be.

V. Where a Commission of Inquiry is appointed under the CoI Act to inquire into an accident, the Railway Administration or its officers cannot proceed with any pending inquiry, investigation or other proceeding in relation to that accident, meaning thereby after the appointment of a Commission of Inquiry under the CoI Act, the Railway Administration or its officers cannot commence any inquiry or investigation.

12. Having perused the pleadings and heard the learned counsel, we find that there is no dispute about the fact that Justice Nanavati Commission has been appointed by the State Government to inquire into the facts, circumstances and the course of events of the incident that led to fire engulfing some coaches of the Sabarmati Express train on 27.2.2002 near Godhra Railway Station. The State

Commission was appointed on 6.3.2002 and is still functioning.

There is also no dispute about the fact that the Central Government has not appointed any Commission under Section 3 of the CoI Act. The learned Single Judge has recorded in para 6 of the order under appeal that the learned counsel for the Railway Administration had fairly conceded that the High Level Committee cannot be said to be a Commission appointed under Section 3 of the CoI Act. The same position was reiterated before this Court. The learned counsel for the first respondent herein (original petitioner) is, therefore, on strong ground in submitting that what cannot be done directly by the Central Government under Section 3 of the CoI Act, cannot be done indirectly by one of its departments (Railway Administration) by invoking the executive power under Article 73 of the Constitution. As per the settled legal position, while the executive power of the Central Government under Article 73 of the Constitution would be available to the Central Government for any subject for which the Parliament can make legislation i.e. any subject falling in List I (Union list) or in list III (Concurrent list), such executive power is always circumscribed by any existing legislation on the relevant subject. Since the Parliament has specifically mandated in the proviso to sub-section (1) of Section 3 that the Central Government shall not appoint another Commission to inquire into the same matter for so long as the State Commission is functioning, the Central Government could not have appointed a Commission to inquire into the cause of fire in some coaches of

Sabarmati Express near Railway Station at Godhra which is admittedly within the State of Gujarat. Of course, the legislation has provided that the Central Government can appoint another Commission if it is of the opinion that the scope of the inquiry should be extended to two or more States. Clause (b) in the terms of reference of the High Level Committee did require the Committee to ascertain the events, developments and circumstances that took place after the train left Muzaffarpur on 25.2.2002 and before it reached Godhra and beyond (including the States of Bihar, Uttar Pradesh and Madhya Pradesh) and if those causes individually or conjointly, contributed to the fire. However, admittedly the fire took place near the Godhra Railway Station and any "events, developments or circumstances" that took place in the States of Bihar, Uttar Pradesh and Madhya Pradesh before Sabarmati Express entered into the State of Gujarat cannot confer on the Central Government the power to appoint another Commission to inquire into "precise cause of fire" in Sabarmati Express near Godhra Railway Station. The Court, therefore, finds considerable substance in the submission made by Mr Nageshwara Rao for the original petitioner that as per the settled legal position what cannot be done directly by the Central Government by appointing a Commission cannot be permitted to be done indirectly by appointing a High Level Committee.

13. Having been faced with this situation, the learned counsel for the Railway Administration made three fold

submissions:-

Firstly, the Committee was appointed by the Railway Administration to inquire into the events which involved damage to the railway property and also loss of life or injuries to railway passengers and, therefore, the "railways" being the subject at Entry 22 in List I, the Central Government alone had the authority to appoint a Commission to make an inquiry into the incident.

On the other hand, the learned counsel for the original petitioner and the learned Advocate General for the State Government submitted that essentially the inquiry by the State Commission relates to the incident which involved commission of offences investigated by the State police and to be tried by the Courts in the State of Gujarat, that it is law and order problem or public order problem and, therefore, the matter falls in List II.

14. Although this submission was made on behalf of the appellant in rejoinder arguments, we have examined the submission of the appellant very carefully. We are, however, not in a position to accept the same. Such controversy whether a particular subject falls in one List or the other has arisen on several occasions in the past, not only after coming into force of the Constitution, but even under Section 100 of the Government of India Act, 1935. The Privy Council in **Prafulla Kumar Mukherjee vs. Bank of Khulna, AIR 1947 PC 60,** approved the enunciation of the doctrine of pith and

substance by the Federal Court through Gwyer, CJ in the following terms :-

> "As Sir Maurice Gwyer C.J. said in Subramanyam Chettiar Case : "it must inevitably happen from time to time that legislation, though purporting to deal with a subject in one list, touches also on a subject in another list, and the different provisions of the enactment may be so closely inter-twined that blind observance to a strictly verbal interpretation would result in a large number of statutes being declared invalid because the legislature enacting them may appear to have legislated in a forbidden sphere. Hence the rule which has been evolved by the Judicial Committee, whereby the impugned statute is examined to ascertain its 'pith and substance', or its 'true nature and character'' for the purpose of determining whether it is legislation with respect to matters in this list or in that." Their Lordships agree that this passage correctly describes the grounds on which the rule is founded, and that it applies to Indian as well as to Dominion legislation."
>
> [emphasis supplied]

The above dictum of Lord Potter speaking for the Privy Council has been repeatedly approved by the Hon'ble Supreme Court as laying down the correct rule to be applied in resolving conflicts which arise from overlapping powers in mutualy exclusive lists in the Seventh Schedule [vide State of Bombay vs. Narothamdas Jethabhai (1951) SCR 51 and State of Bombay vs. FN Balsara, (1951) SCR 682 – AIR 1951 SC 318].

15. The application of the doctrine of 'pith and substance' to the facts in Subramanyan Chettiar case makes instructive reading for the purposes of the present controversy also. The Madras Agriculturists Relief Act, 1938, contained provisions to scale down all debts secured or unsecured due from an agriculturist whether payable under a decree or order of a civil or revenue Court or otherwise with certain exceptions which are not material. The Act contained no reference to promissory notes or any form of negotiable instruments. The Federal Legislature had exclusive power to legislate with respect to cheques, bills of exchange, promissory notes and like instruments (List I, Entry 28), and the provisions of the Madras Act were in conflict with existing law under Entry 28, namely, the Negotiable Instruments Act, 1881. It was, therefore, contended that the Madras Act was wholly void or, at any rate, was void in so far as it affected debts evidenced or secured by promissory notes or negotiable instruments. The Federal Court held that the Madras Act was not in pith and substance a law with respect to negotiable instruments or promissory notes. The fact that many, or even most, of the debts were in practice evidenced by negotiable instruments or promissory notes was **an accidental circumstance** which could not affect the question. [Vide HM Seervai: Constitutional Law of India, Fourth Edition, Volume I, Pages 210-211].

In the facts of the present case also, the incident in question which happened in or on a railway train could as well have

happened on a crowded State Transport Corporation bus on a public highway, but that would not rule out the question of public order or maintenance of law and order as contended on behalf of the respondents in this appeal. We are clearly of the view that the scope or subject of inquiry of the Commission appointed by the State Government is not in pith and substance with respect to a railway coach or railway passengers as such but is in relation to the incident which resulted into death of 58 persons and injuries to more than 40 persons in the context of the allegations made in criminal complaints filed on the same day that a mob had set some coaches of the Sabarmati Express on fire, which triggered off subsequent incidents of violence in the State, the adequacy of administrative measures to prevent and deal with the said disturbances and the role of the Chief Minister, other Ministers, Police Officers and other individuals and organizations in the Godhra incident and in the subsequent disturbances.

16. The second submission of Mr Nanavati for the Railway Administration was that under Rule 2(6)(a) of the Statutory Investigation into Railway Accidents Rules, 1998 (hereinafter referred to as "the 1998 Rules"), framed by the Central Government in exercise of the powers conferred by Section 122 of the Railway Act, 1989, the power of the Commissioner of Railway Safety to hold an inquiry into the same subject matter is taken away only after the Commission of Inquiry to inquire into the same incident is appointed by the Central Government and not by the State Government. Rule

2(6)(a) reads as under:-

> "2(6)(a) Where having regard to the nature of the accident, the Central Government has appointed a Commission of Inquiry to inquire into the accident under the Commissions of Inquiry Act, 1952 (60 of 1952), or has appointed any other authority to inquire into and for that purpose has made all or any of the provisions of the said Act applicable to that authority, the Commissioner of Railway Safety to whom notice of the accident has been given shall not hold his inquiry and where he has already commenced his inquiry he shall not proceed further with it and shall hand over the evidence, records or other documents in his possession, relating to the inquiry, to such authority as may be specified by the Central Government in this behalf."
>
> [emphasis suppled on behalf of appellant]

17. Section 122 of the Act confers powers on the Central Government to make Rules to carry out the purposes of Chapter XII relating to accidents. Sections 114 and 115 of the Railways Act read with Section 113 thereof (all in Chapter XII) confer powers on the Commissioner of Railway Safety and the Railway Board respectively to make an inquiry or investigation into an accident resulting into loss of human life. Section 119 in the same Chapter reads as under :-

> "119. No inquiry, investigation, etc., to be made if the Commission or Inquiry is appointed. - Notwithstanding anything contained in the foregoing provisions of this Chapter, where a Commission of Inquiry is appointed under the Commissions of Inquiry Act, 1952 (3 of 1952), to inquire into an accident, any inquiry, investigation or other proceeding pending in relation to that accident

> shall not be proceeded with, and all records of other documents relating to such inquiry shall be forwarded to such authority as may be specified by the Central Government in this behalf."
>
> [emphasis supplied]

It is thus obvious that the Parent Act prohibits the Commissioner of Railway Safety as well as the Railway Administration from making any inquiry, investigation or continuing with other proceeding into an accident where a Commission of Inquiry is appointed under the CoI Act to inquire into the same accident irrespective of the fact whether such Commission of Inquiry is appointed by the Central Government or the State Government. Far from holding any inquiry, the Commissioner of Railway Safety and Railway Administration has to forward all records and other documents relating to such inquiry to the specified authorities as may be specified by the Central Government in this behalf. The provisions of Rule 2(6)(a) of the 1998 Rules cannot, therefore, be read so as to whittle down the provisions of Section 119 of the Parent Act.

Accordingly the power of the Railway Administration to make an inquiry or investigation under Sections 114 and 115 of the Railways Act cannot be exercised even where the State Government has appointed a Commission of Inquiry under the CoI Act to inquire into an accident.

18. Thirdly, Mr Nanavati for the Railway Administration

invoked the observations made by the Apex Court in State of Karnataka vs. Union of India, 1977 (4) SCC 608 (para 24) to the effect that even after appointment of Commission by the State Government under Section 3 of the CoI Act, the Central Government may appoint another Commission in order to deal with substantially different subject matter relating to the same transactions; in view of the divergence in objects, certain areas of fact or rules governing transactions may be common and if the objects are different the examination of common areas of fact and law for different purposes will still be permissible.

It is vehemently submitted that since the Railway Administration appointed the High Level Committee to examine the questions of passenger safety and damage to railway property, the appointment of such Committee does not become illegal merely because the common areas of fact and law are to be examined by the State Commission appointed earlier and merely because both the inquiries pertain to the same coach of the Sabarmati Express and the same passengers who were travelling in the train.

19. Before dealing with the above submission, it is necessary to carefully highlight the relevant facts in the Karnataka case and thereafter to set out all the relevant observations made by the Apex Court :-

11.4.1977 Some members of Karnataka State Legislative Assembly sent memorandum to Prime Minister making serious allegations of corruption, nepotism, favouritism and misuse of governmental power against the Chief Minister and other Ministers of the State of Karnataka in relation to several transactions.

26.4.1977 The Union Home Minister sent a letter to the Chief Minister of Karnataka communicating the above allegations and inviting his comments.

13.5.1977 The Chief Minister of Karnataka gave a reply to the above communication denying the allegations as slanderous and politically motivated.

18.5.1977 The Government of Karnataka appointed the Commission of a retired High Court Judge to inquire into, with regard to about 32 transactions mentioned therein, whether irregularities were committed/excess payments made in certain matters relating to contracts, grants of land, allotment of sites, purchase of furniture, disposal of foodgrains, etc. and who were the persons responsible for the **lapses**, if any, regarding the aforesaid and to what extent ?.

23.5.1977 The Central Government appointed a Commission headed by a retired Supreme Court Judge (Mr Justice AN Grover) to inquire into the serious allegations of corruption, nepotism, favouritism and misuse of Government powers against the Chief Minister and other Ministers in connection with about 40 instances/transactions.

1977 State of Karnataka filed suit before the Hon'ble Supreme Court challenging the above notification of the Central Government.

It was in the aforesaid context that the Apex Court first referred to the distinctions between two notifications in para 17 of the judgment, also recorded in para 18 that the items mentioned in the two notifications mostly do not tally with each other and then explained the distinctions in the following words :-

> "18. Even if a transaction has been made completely in accordance with the rules, it may, nevertheless, be an act of favouritism tainted with corruption or dishonesty. Less deserving parties could be deliberately preferred over more deserving parties in such transactions. It is not difficult to make out compliance with the rules or to show on paper that the most deserving party has received the benefit of a contract. Indeed, even the most

deserving party may receive a contract or a benefit under a decision taken by a Government or its Ministers who may have received an illegal gratification for it without anything whatsoever appearing on the records of the Government about the bribe received by the Minister concerned. Hence, in addition to the fact that the items mentioned in the two notifications mostly do not tally with each other, it appears to us that the objects of the State notification do not go beyond investigation into the illegality or irregularity of any transaction and "responsibility" only of persons concerned to point out what they were. If one may so put it, the State notification is meant to set up a Commission which has to inquire whether the veil worn by certain transactions is correct in form and covers it fully, but the Central Government notification is clearly meant to enable the Commission appointed to tear down even the veil of apparent legality and regularity which may be worn by some transactions. It authorizes the Grover Commission to inquire into and discover the reality or substance, if any, behind certain (mostly other) transactions. The object of the Central Government notification seems clearly not only to affix responsibility for transactions mentioned there on individuals who may be really guilty even if a few of them could be said to have been mentioned in both notifications. We do not think that

such notifications would justly or fairly be spoken of as covering "the same matter", as contemplated by proviso (b) to Section 3(1) of the Act, because the State Commission is there to examine the appearance or the surface whereas the Central Commission is expected to delve deeper into what could only lie behind or below it.

20. ... ... We cannot view allegations of corruption lightly. We think that the interests of the States and of the Union are not antithetical when there are charges of corruption and misuse of power against those in authority anywhere. To serve the common interests of the whole people, on whose behalf our Constitution speaks, the States and the Union cannot stand apart. They must stand together united in purpose and action. It is as important that unjustified and malicious attacks and charges against individuals in high places should be unmasked and the reality behind them exposed for what it is worth, as it is that justified complaints must find adequate means of redress so that the interests of the dumb millions of our countrymen are duly safeguarded against unscrupulousness wherever found. If, as we find in this case, the State notification is meant only to superficially scratch the surface of the allegations made, whereas the Central Government notification is meant to probe into the crux or the heart

of what may or may not have gone wrong with the body politic in the State of Karnataka, we could not be too technical or astute in finding reasons to hold that the subject matter of the two enquiries is substantially the same. Obviously, this could not really be so. A bare reading of the two notifications, set out in full above, shows that .

22. The plaintiff has not suggested anywhere that the Grover Commission is not presided over by an individual of unquestionable integrity and independence who has been a Judge of this Court. Mr Lal Nariain Sinha, appearing for the plaintiff, has, very frankly and properly, conceded that he cannot successfully press want of bona fides on the part of the Central government in issuing its notification. This means that the question whether the Commission is either unnecessary, except as a weapon of political welfare, as well as any doubts about whether it could be or was to be misused in this case, must be dismissed or unsustainable. The State Government must itself be deemed to admit that circumstances necessitated the appointment of a Commission, by appointing its own, to inquire into analogous matters which deserved investigation due to their public importance.

24. In view of what we have observed above, it would perhaps be proper for the Government of Karnataka itself to withdraw its own notification if it thinks that certain members of the State Government will be unduly embarrassed by having to face inquiries by two Commissions on matters which may have some connections or even some common areas. Indeed, to get to the heart of a transaction, its surrounding or superficial shell, which is all that the State Commission can inquire into with regard to some transactions, may have to be pierced, or, to some degree, traversed before the core of these transactions can be reached. As we hold that the two notifications authorise inquiries into matter which are substantially different in nature and object, the enquiry by the Grover Commission cannot be said to be barred by reason of the State Government notification under proviso (b) to Section 3(1) of the Act, even if, in order to deal with the substantially different subject matter, in view of the divergence in objects, certain areas of fact or rules governing transactions may be common. If the objectively are different the examination of common areas of fact and law for different purposes will still be permissible.

25. Without doubting the motives of the State Government in appointing its own Commission perhaps

> we may observe that, in a case involving charges of the kind made against the Chief Minister and other Ministers of the State, it would be better if the State's own Commission did not even remotely appear to have been set up merely in anticipation of a thorough investigation by an outside Central authority which would, presumably, appear more impartial and objective, or, to impede or embarrass the proceedings of the Central Government Commission. Such doubts as could arise on these grounds will be dispelled by the withdrawal of the State notification. Although the prompt action of the State Government may seem quite commendable and bona fide, in appointing its own Commission in the context and circumstances disclosed above, its continued existence may not give exactly that impression after what we have held above on an analysis of the apparent objects of the two Commissions judged by the contents of the two notifications."
>
> [emphasis supplied]

20. What emerges from the above facts and the observations is that in the suit filed by the Government of Karnataka challenging the appointment of Central Commission, short of striking down the State Government notification dated 18.5.1977 appointing the Commission of Inquiry to inquire into mere lapses, the Apex Court literally condemned the stand of the State government in appointing

the Commission merely for the purpose of scratching the surface of the so-called lapses and held that the State Government was avoiding an inquiry being made into serious allegations of corruption, nepotism, favouritism and misuse of governmental power against the Chief Minister and other Ministers and that the State Government had appointed the Commission to preempt the appointment of a Commission of Inquiry by the Central Government. It was in this context that the Apex Court made the observations in para 24 of the judgment in the Karnataka case which are sought to be relied upon by the Railway Administration. Moreover, (unlike the present case) no allegations were made against the bona fides of the Central Government in appointing the Commission of Inquiry as is apparent from para 22 of the said judgment.

21. Comparing and contrasting the facts of the Karnataka case with the facts of the present case -

27.2.2002 The Godhra tragedy took place where 58 persons were burnt alive and more than 40 persons were injured.

27.2.2002 On the same day, criminal complaints were filed alleging that a large number of accused had gathered near the Godhra Railway Station and they set some coaches of the Sabarmati Express on fire and a large number of accused were rounded up on the same day.

28.2.2002 The Chief Minister of the State made an announcement on the floor of the Legislative Assembly that a Commission would be appointed to inquire into the Godhra incident.

6.3.2002 The State Government appointed a Commission to inquire into the aforesaid incident.

21.5.2002 The said Commission as reconstituted came to be headed by a retired Judge of the Supreme Court with a retired High Court Judge as a Member of the Commission. The terms of reference included the incident which took place near the Godhra Railway Station on 27.2.2002 and also the subsequent incidents of violence in the State of Gujarat in the aftermath, adequacy of administrative measures taken to prevent and deal with the disturbances in Godhra and subsequent disturbances in the State.

20.7.2004 The terms of reference were expanded to include inquiry into the role and conduct of the Chief Minister and other Ministers, Police Officers, other individuals and organizations in the incident near the Godhra Railway Station and also the subsequent incidents of violence in the State of Gujarat and also in the matter of providing protection, relief and rehabilitation to the victims of

communal riots and also to ascertain as to whether the incident at Godhra was pre-planned and whether there was failure of the agencies which could have been used to prevent the incident and to recommend suitable measures to prevent recurrence of such incidents in future.

4.9.2004 The Railway Administration in the Central Government constituted a High Level Committee headed by another retired Judge of the Hon'ble Supreme Court to ascertain the precise cause of fire in coach S-6 of Sabarmati Express on 27.2.2002. The terms of reference at (b) and (c) impliedly attributed a part of the blame on the passengers in the said train, while requiring the Committee to inquire into their behaviour before reaching Godhra and beyond. The Committee was also required to ascertain the wrongs, negligence and defaults on the part of the Railway employees and also to examine the rescue and relief operations and improving the quality of response in such situations.

It is thus clear that while the State Commission has been looking into the incident that resulted into death of 58 lives and injury to more than 40 persons travelling in the Sabarmati Express on 27.2.2002 and also the subsequent incidents of violence in the State in the aftermath of the Godhra incident, and also the role of

the Chief Minister and other Ministers in the incidents at Godhra as well as the subsequent incidents in the State (and there is not even a whisper that the Godhra incident is not "being properly inquired into by the State Commission"), the Committee appointed by the Railway Administration was also appointed to look into the same incident at Godhra which took place on 27.2.2002 and the other allied questions regarding the acts of negligence, defaults and wrongs on the part of the employees of the Railway Administration were allied or consequential issues added on the premise that the passengers in the train were mainly responsible for the eventual tragedy or on the premise that the fire was the result of an accident simpliciter. If at all the Railway Administration was keen to have an early inquiry made into any wrongful acts, negligence or defaults on the part of the officials and workmen of the railway administration and its security staff and into the preparedness of the rescue and relief operation and recommending measures for improving the quality of response in such situation, the Central Government could as well have called upon the the State Government to request Justice Nanavati Commission to submit an interim report with regard to the facts, circumstances and course of the events of the incidents that resulted into fire in some coaches of the Sabarmati Express train on 27.2.2002 near Godhra Railway Station before concluding the inquiry into the subsequent incidents in the State of Gujarat.

22. We have also gone through the interim report of the

Committee, the relevant extracts of which are set out in para 4.3 hereinabove. The accident bulletin issued by the Railway Administration on 28.2.2002 i.e. immediately after the incident fairly stated that a mob had set some coaches of the Sabarmati Express on fire. In the judgment rendered in December, 2003 in Case No. OA 0300027 filed by the original petitioner (the first respondent in this appeal) for compensation for the injuries sustained by him, the Railway Claims Tribunal had recorded the following finding :-

> "It may be stated that the incident of the coach being set on fire under a violent attack is an admitted fact." [Annexure "F" to the petition, page 134]

The Tribunal also awarded the original petitioner compensation of Rs.20,000/-.

Similarly, in the judgment dated 16.8.2004 in Claim Application No. OA 0300302, another Bench of the Railway Accident Claims Tribunal at Ahmedabad also gave the following finding :-

> "It is undisputed that the coach in which the deceased was travelling was set on fire by a violent mob at Godhra resulting in death and injuries to many passengers."

In light of the aforesaid consistent stand of the Railway Administration right from 28.2.2002 till 16.8.2004, and the material distinctions in the fact situation of the Karnataka case and the present case, we are of the view that the decision of the Apex Court

in Karnataka case (Supra) does not at all advance the appellant's case.

23. In view of the above discussion, we are of the view that the original petitioner has made out a strong prima facie case that the appointment of the Committee by the Central Government under notification dated 4.9.2004 is absolutely illegal and contrary to the express mandatory provisions of clause (b) in the proviso to sub-section (1) of Section 3 of the CoI Act and also contrary to the express mandatory provisions of Section 119 of the Railways Act.

24. Mr Nanavati for the Railway Administration would still contend that no prejudice will be caused to any person if the report dated 3.3.3006 of the Committed is laid before the Parliament and that sub-section (4) of section 3 of the CoI Act mandates that such report with a memorandum of the action taken thereon has to be placed before the Parliament within a period of six months of the submission of the report, but for the present no action will be taken on the report till the final disposal of the petition.

In the first place, the above provisions are applicable to the report of the Commission appointed under Section 3(1) of the CoI Act and not to the report of a Committee. Admittedly, what the Railway Administration of the Central Government had appointed on 4.9.2004 was a Committee and not a Commission under Section 3(1) of the CoI Act. Assuming that the Committee by whatever

name called was an authority contemplated by Section 11 of the CoI Act, the proviso to sub-section (1) of Section 3 applies in either case whether what is appointed is a Commission under Section 3(1) of the CoI Act or is an authority (by whatever name called) referred to in Section 11 of the Act. We have already indicated earlier (para 11 IV) that the embargo that when the Commission appointed by the State Government to inquire into the same matter is functioning, the Central Government cannot appoint another Commission or Committee to inquire in the same matter - this embargo applies irrespective of the fact whether the appointment of the Commission/Committee by the Central Government is on the formation of the necessary opinion by the Central Government itself or even under a resolution in that behalf passed by the Parliament. Once the appointment of the Committee made on 4.9.2004 is found to be illegal and void ab initio, the question of laying the report of the Committee before the Parliament cannot arise nor can the Railway Administration be permitted to go ahead with giving publicity to the report of such Committee. Once the strong prima facie case is made regarding not merely illegality in appointment of the Committee, but also total lack of jurisdiction to make such appointment, the question of making the report available to Parliament for discussion would not arise even if the Committee were appointed pursuant to a resolution of the Parliament.

As regards the prejudice likely to be caused if the report of the Committee is permitted to be circulated and discussed, apart

from the fatal illegality in the appointment of the Committee, clause (b) of Rule 2(6) of the Statutory Investigation into Railway Accidents Rules, 1998 is itself a statutory recognition of the principle being canvassed by the original petitioner :-

> "2(6)(b) If, as a result of the Police Investigation a regular case is lodged in a Criminal Court by the Police or arising out of the accident, a case is lodged in a Civil Court by interested person(s), the Commissioner shall finalise his report and circulate the same as per Rule 4, as a strictly confidential document."

Admittedly, the criminal cases filed against the accused alleged to have set the S-6 coach of the Sabarmati Express train on fire on 27.2.2002 are still pending and, therefore, the report of the Committee cannot he allowed to be made a public document.

25. We may also note at this stage that when the accused in the Godhra incident case filed applications for bail pending trial, the applications were rejected by the trial Court. The accused thereupon filed Criminal Appeal Nos. 69, 600 of 2004 and connected matters which came up for hearing before another Division Bench of this Court [Coram : Hon'ble Mr Justice RK Abichandani (as His Lordship then was) and Hon'ble Ms Justice HN Devani] and in the judgments dated 20.10.2004 in the aforesaid appeals, the Division Bench made the following observations :-

> "8. We have been taken through the record at great

length and have considered the submissions of both the sides. Since the question involved is as to whether bail should be granted or not, it would not be appropriate on our part to express opinion on the reliability of the evidence on any argumentative grounds urged by the learned counsel for the parties. Police statements of witnesses, statements recorded under Section 164 of the Code before the Judicial Magistrate, statements recorded under Section 32 of the POTA, and other record which is read before us, prima facie shows that substantial quantity of inflammable substance like petrol had been accumulated beforehand at a nearby place, and as soon as the train was halted by pulling chain, the same was used for setting bogey no.6 on fire around 8.00 a.m.on 27th February, 2002. There are statements indicating that two meetings had taken place in the Aman Guest House, Signal Faliya, Godhra in the night of 26th February, 2002, wherein Haji Bilal and Faruk Bhana had communicated a specific instruction of Maulvi Hussain Umarji for setting bogey no.S-6 of the Sabarmati Express coming from Ayodhya on fire. For this purpose, Abdul Rajak Kurkur the owner of the guest house and his close associates were asked to collect petrol in the night of 26th February, 2002 itself and 140 litres of petrol had been collected from a nearby petrol pump and kept in the Aman Guest House in the night of 26th February, 2004 (Statement under Section 164 of the Code before the Judicial Magistrate given by Jabir Bin Yamin Bahera on 5th February, 2003). It also appears that the movement of train was verified from the Godhra railway station in the early hours of 27th February, 2002, as it was running four hours behind the schedule. The chain pulling was done simultaneously from various compartments soon after the train started after the first chain pulling which was done at the platform. The petrol cans which were stored at Aman Guest House were taken in a loading rickshaw near the “A” cabin and the bogey was set on fire by putting burning rags inside the compartment and through broken windows by the miscreants. Few culprits

had forcibly entered the compartment by cutting open the vestibule and petrol was emptied in that compartment. The passengers were terrorised by beating them and pelting of stones and were prevented from coming out from the burning compartment. Provocative slogans were shouted from the loudspeaker from a nearby mosque to arouse passions in the violent mob. Fire tenders were prevented from going near the place of the incident. Jabir Bin Yamin Bahera who gave his confessional statement under Section 164 has given graphic details of the conspiracy. Moreover, Salim @ Salman Yusuf Sattar Jarda, has also given the similar version in the statement recorded under Section 32 of the POTA, on 20th June, 2004. We are, therefore, prima facie satisfied that there is sufficient material to indicate that conspiracy was hatched for attacking the compartment in which Kar Sevaks were travelling from Ayodhya and that inflammable material was collected on the previous night i.e. On 26th February, 2002 in the Aman Guest House, which was quite near the place of the incident that took place near "A" cabin, where the train was halted after simultaneous pulling of chain from four compartments and where a mob of 900 persons attacked the train and some of them set the compartment S-6 on fire by using petrol, which was collected on the earlier evening. Swift manner in which the entire operation of attacking the said compartment of the train took place indicates that it was a well planned out attack for achieving the common object of committing these crimes for which the accused are chargesheeted."

[emphasis supplied]

The interim report dated 17.1.2005 of the Committee headed by a retired Judge of the Hon'ble Supreme Court eliminated the "petrol theory" and even "miscreant activity theory" and propounded the theory of simple accident without considering the

above material referred to in the aforesaid judgment dated 30.10.2004 and the Committee had also stated in the said interim report as under :-

> "It is, however, made clear that after the completion of winess-action before the High Level Committee, the undersigned may **add a page or two** as regards the causes of fire as well along with other issues referred to the High Level Committee as noted above." [Page 99)
>
> [emphasis supplied]

In the background of the aforesaid history of the case when the original petitioner contends that he was a victim of the mob violence and that the criminal trial would be prejudiced if the report dated 3.3.2006 of the Committee (whose appointment itself was illegal and void ab initio is permitted to be circulated and discussed) that cannot be said to be a submission or apprehension without substance.

26. In light of the above discussion, this Court has no difficulty in endorsing the view of the learned Single Judge that the trial of the criminal cases in question will be prejudiced if the report of the Committee is allowed to be published, circulated and discussed.

27. This also brings us to the discussion on the question of locus standi of the petitioner. We find considerable substance in the submission made by the learned counsel for the original petitioner

that just as the accused has the right to fair trial, every witness and every victim of a crime also has the right to demand a fair trial. There is no dispute about the fact that the original petitioner was one of the passengers travelling in S-6 coach of the Sabarmati Express. In fact, the original petitioner had filed case No. OA 030027 against the Railway Administration for compensation alleging that when the train reached the Godhra Railway Station, the said coach was set on fire leading to deaths of, injuries to many passengers. The petitioner was taken to Civil Hospital at Godhra and then to Civil Hospital at Ahmedabad and discharged on 18.3.2002. As indicated earlier, the Tribunal held that the incident of the coach being set on fire under a violent attack was an admitted fact and that railway authorities had also made ex-gratia payment of Rs.500/- to the petitioner and, the Tribunal thereafter passed the order directing the Railway Administration pay the petitioner a sum of Rs.20,000/- by way of compensation. If such a victim of the incident comes before the Court and insists that the Committee appointed by the Railway Administration 2½ years after the date of incident is not only illegally appointed, but has also submitted an interim report which takes an absolutely contradictory view vis-a-vis the stand of the Railway Administration for the last 2½ years and that the Committee should be restrained from proceeding further and that the authorities be restrained from giving publicity to the final report of the Committee, it cannot be said that the petitioner has no personal interest in the matter. As held by the Apex Court in Venkateswara Rao vs. Govt. of Andhra Pradesh, AIR 1966 SC 828,

"ordinarily" the petitioner who seeks to file an application under Article 226 of the Constitution should be one who has a personal or individual right in the subject matter of the petition, but a personal right need not be in respect of a proprietary interest. In exceptional cases as the expression "ordinarily" indicates, a person who has been prejudicially affected by an act or omission of an authority can file a writ even though he has no proprietary or even fiduciary interest in the subject matter thereof. When the petitioner has been prejudiced by an administrative order or action, the petition under Article 226 of the Constitution at his instance is certainly maintainable.

28. We make it clear that at this stage we have not gone into the question of mala fides pressed by the petitioner in the petition which is still pending before the learned Single Judge and, therefore, it will be open to the learned Single Judge to decide the said question at the time of final hearing of the petition, if at all it becomes necessary to do so. As far as the legal contentions are concerned, since they were raised before us on behalf of the appellant and argued at length, we have dealt with the same.

29. Coming to the observations made by the learned Single Judge in para 15 of the order under appeal, it is not possible to accept the submission of the learned counsel for the Railway Administration that the order under appeal was passed on account of the submission of the report of the Committee before the date of pronouncement of the judgment. In fact, when the hearing before

the learned Single Judge concluded on 21.2.2006 and the matter was directed to be posted for pronouncement of order on 7.3.2006, the Railway Administration was expected to point out before the learned Single Judge that the term of the Committee was going to expire by efflux of time on 4.3.2006 in which case the learned Single Judge would have pronounced the order on an earlier date. Ever since the appointment of the Committee on 4.9.2004, the term of the Committee was being extended from time to time every three months and, therefore, the learned Single Judge and the original petitioner did not expect that the term would not be extended after 4.3.2006. The learned Single Judge was merely pained to note that the deference shown by the learned Single Judge to the High Level Committee by not passing any interim order against the Committee continuing with the proceedings (although the learned Sinlge Judge was inclined to grant interim stay against the proceedings before the Committee), was not reciprocated by the High Level Committee. Even so we are inclined to expunge the observations made by the learned Single Judge that the Committee had tried to overreach the process of the Court by submitting the report during pendency of the petition inspite of the interim order dated 26.10.2005. We appreciate the submission of Mr Nanavati, learned counsel for the Railway Administration that the interim order dated 26.10.2005 merely observed that if respondent No.6 (the High Level Committee) submits any report, the same will not be implemented by respondent Nos. 1 to 3 (in the petition) without the permission of this Court till the next date of hearing and the same interim order continued from

time to time in the same terms. It is, therefore, not possible to find fault with the Committee in so far as the Committee submitted the report on 3.3.2006 before expiry of its term on 4.3.2006. Hence, we are inclined to expunge the observations made by the learned Single Judge in para 15 of the order under appeal to the effect that the report was submitted in order to overreach the process of the Court. The submission of the report by the Committee without permission of the Court cannot be frowned upon when there was no interim stay against submission of the report by the Committee. At the same time, we do agree with the learned Single Judge that the publicity was not required to be given to the report submitted on 3.3.2006 when the criminal cases lodged on 27.2.2002 in relation to the same incident are still pending for trial and sub-clause (b) of sub-rule (6) of Rule 2 of the 1998 Rules also requires the administration to keep such a report as a strictly confidential document.

30. In view of the above discussion, subject to expunction of the remarks made by the learned Single Judge in para 15 of the order under appeal as indicated in the preceding paragraph of this judgment, the appeal is dismissed.

In the facts and circumstances of the case, there shall be no order as to costs.

[M.S. SHAH, J.]

[SHARAD D. DAVE, J.]

At this stage, Mr Nanavati, learned counsel for the Railway Administration prays for stay of operation of this judgment in order to have further recourse in accordance with law.

We have merely dismissed the appeal against the order passed by the learned Single Judge and, therefore, the question of granting stay of operation of this judgment does not arise.

[M.S. SHAH, J.]

[SHARAD D. DAVE, J.]

sundar/-